

## **GROUP PRACTICE AND THE IN-OFFICE ANCILLARY SERVICES EXCEPTION – THE KEY TO LIVING WITH STARK**

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The Stark Law creates an imposing set of rules that define in what limited circumstances physicians may refer to businesses that provide “designated health services (DHS),” where the physician has a financial relationship with the business and Medicare or Medicaid is implicated. The law contains a myriad of exceptions, so that if certain defined facts are satisfied the Stark Law does not apply. Arguably the most important exception for physicians is the in-office ancillary services exception that is only available if the physicians operate as a “group practice.”

The Stark Law provides, in general, that neither a physician nor his or her immediate family members may make a referral to an entity, or make or cause to be presented a claim to any individual, third party payor, or other entity for DHS, if such physician or family member has a “financial relationship” with such entity. Financial relationship includes an ownership or investment interest in the entity or a compensation arrangement with the entity. One exception to the general rule of prohibition is the in-office ancillary services exception. If a physician group is a group practice under Stark and can meet the in-office ancillary services exception, the group is able to provide DHS as a part of its practice (determined separately for each DHS activity).

The common thread of all of the requirements of the in-office ancillary services exception is “group practice.” The basic group practice requirements include: the Two Physician Requirement; the Single Legal Entity Requirement; the Full Range of Services Test; the Substantially All Services Test; the Distribution of Income and Expenses Requirement; the Unified Business Test; the Compensation Test; and the 75% of Patient Encounters Test.

Even if all of the above tests are satisfied, so that the physician organization qualifies as a group practice, three other tests must still be met before the in-office ancillary services exception is available for the group.

The first additional test is the Performance and Supervision Test. For this test to be satisfied the DHS as to which the in-off ancillary services exception is sought must be performed by either the referring physician, another member physician, or an individual properly supervised by the referring physician or by another physician in the group (including an independent contractor).

A second additional test is the Site of Service Test. There are two alternative ways to meet this test. The first alternative is called the “same building” option which requires that the physician making the referral (or another physician who is a member of the group) provide a certain amount of physician services, unrelated to the furnishing of DHS, in the same building where the DHS is furnished. The second alternative is the

“centralized building” option. Some or all of the group’s DHS may be delivered in a “centralized building” where no general medical practice is conducted.

The final test is the Billing Test. For this requirement to be met, DHS must be billed by the performing or supervising physician, the group practice, an entity wholly-owned by the group or the performing or supervising physician, or by an independent third party under an arrangement that complies with Medicare billing and reassignment requirements.

As reflected above, a multitude of tests must be satisfied before a physician’s activities can fall within the Stark Law’s in-office ancillary exception. Providers seeking to come within this exception must carefully review both the law and its corresponding regulations before concluding that their referral activities are exempt from Stark’s prohibitions.